

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
FEBRUARY 15, 2022**

ITEM 3

SUBJECT

CONSIDERATION OF A PROPOSED ORDER TAKING ACTION ON PETITIONS FOR RECONSIDERATION OF THE EXECUTIVE DIRECTOR'S JUNE 1, 2021 ORDER APPROVING A TEMPORARY URGENCY PETITION TO MODIFY SPECIFIED DELTA FLOW AND WATER QUALITY REQUIREMENTS INCLUDED IN DECISION 1641; AND THE EXECUTIVE DIRECTOR'S JUNE 10, 2021 SACRAMENTO RIVER TEMPERATURE MANAGEMENT PLAN APPROVAL PURSUANT TO ORDER 90-5

DISCUSSION

On May 17, 2021, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) jointly filed a Temporary Urgency Change Petition (TUCP) to temporarily modify terms and conditions in their water right license and permits for the State Water Project and Central Valley Project that require compliance with certain flow and water quality objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) as required by Revised Decision 1641 (D-1641).

On June 1, 2021, the State Water Board's Executive Director issued an order conditionally approving the TUCP (TUCP Order) to address critically dry conditions associated with California's ongoing drought. The TUCP Order temporarily modified Delta outflow requirements from June through July and agricultural water quality requirements from June through August 15 of 2021 to lessen shortfalls in water supplies and conserve storage for later in the year for multiple purposes, including maintaining salinity control in the Delta, managing temperatures in the Sacramento River for salmonids, and ensuring minimal health and safety requirements were achieved. One of the conditions of the TUCP Order was a requirement to implement a Sacramento River Temperature Management Plan (TMP) as approved by the State Water Board's Executive Director.

On May 28, 2021, Reclamation submitted a 2021 TMP pursuant to Water Right Order 90-5. On June 10, 2021, the State Water Board's Executive Director conditionally approved the TMP to address significant reductions in projected inflows to Shasta Reservoir while improving Reclamation's ability to control temperatures in the Sacramento River and decrease temperature dependent mortality to winter-run Chinook salmon.

Under Water Code section 1122 and California Code of Regulations, title 23, sections 768 -770, any interested person may file a petition for reconsideration of certain orders or decisions made under authority delegated to an office or employee (the Executive Director in this case) of the State Water Board. Pursuant to these requirements, multiple parties submitted petitions for reconsideration for both decisions of the Executive Director: the June 1 TUCP Order and June 10 approval of the TMP. State Water Board staff released a draft Order for public comment on December 15, 2021, which would take action on the petitions for reconsideration of both of the Executive Director's decisions ([draft Order](#)). The draft Order addresses five petitions for reconsideration (and numerous objections) which were received on the TUCP Order, and two petitions for reconsideration that were received on the June 10 approval of the TMP.

The draft Order denies in part and grants in part the petitions for reconsideration and determines that approvals of the TUCP Order and the Sacramento River TMP were appropriate, based on the information available at the time, but that additional measures are needed to improve future planning for drought conditions in the Delta and Sacramento River watersheds. The draft Order includes conditions to address actions needed for next year if conditions remain dry to protect the public interest, ensure adequate water supplies are maintained in storage to meet municipal and other critical needs, and prevent catastrophic impacts to fish and wildlife.

A public workshop was held on January 5, 2022, to receive oral comments on the draft Order, and written comments on the draft Order were due January 7, 2022. Based on the public comments, proposed edits to the December 15, 2021 version of the draft Order have been made and a February 4, 2022 version of the draft Order has been posted on the State Water Board's website with changes from the December 15, 2021 version shown in strikeout underline.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

This activity is budgeted within existing resources, and no additional fiscal demands will occur as a result of approving this item.

REGIONAL BOARD IMPACT

None

STAFF RECOMMENDATION

Staff recommends the State Water Board adopt the proposed Order.